IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7367 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILIP @ DALIYO @ DINESHBHAI VERSIBHAI BORISA (MOCHI)
Versus
COMMISSIONER OF POLICE

Appearance:
MS KRISHNA U MISHRA for Petitioner
MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the detention order passed on 15.5.2000 by the respondent no. 1 in exercise of his powers conferred upon him under sec.

3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, it is the case of the detaining authority that the petitioner-detenu is a 'dangerous person' within the meaning of section 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. To arrive at a subjective satisfaction, the detaining authority has placed reliance on three IPC cases lodged in Naranpura Police Station, outof which, one case is pending in the court awaiting trial and two cases are pending with the Investigating Officer for further investigation. The detaining authority has also placed reliance on the statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers, the statements were recorded on 11.5.2000 and 12.5.2000, respectively and, both the statements were verified by the detaining authority on 14.5.2000 and on the next day i.e. on 15.5.2000 the order of detention came to be passed by respondent no. 1, which is challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavit in replies, in reply to main petition,controverting the grounds of attack to challenge the order of detention.

4. Ms KU Mishra learned advocate for the petitioner has argued that in this case, the detaining authority has placed reliance on the statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. That two statements were verified by the detaining authority on 14.5.2000 and on the very next day the order of detention came to be passed. Thus, the detaining authority has not claimed the privilege in accordance with law. She has placed reliance on the authority authority of Kalidas Chandubhai Kahar vs. State of Gujarat & Ors. reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. It has been further held that at the time of exercising the privilege under sec. 9(2) of the Act, balance is required to be struck between the public interest on the one hand and the right of the detenu to make a representation under Article 22(5) of the Constitution on the other. If the statements of the witnesses are to be relied on, they must be genuine statements of the real persons. The detenu would like to

verify as to whether these persons are fictitious persons or not and/or whether their statements are bogus statements or not ? Unless the detenu knows the names and addresses of the persons who have given the statements, he cannot verify the aforesaid facts and if the names and addresses along with the contents of the statements are supplied to the detenu, he can have full opportunity to verify the position and make an effective representation on that basis. As against this, there is a provision under sec. 9(2) carved out on the basis of Article 22(5) of the Constitution which provides that nothing in sub-sec. 1 shall require the authority making such order to disclose facts which it considers to be against the public interest to disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. It was held that looking to the respective dates of verification of statements and date of order of detention as stated in that case the detaining authority had no sufficient time to examine the possibility of exercising the privilege under Sec. 9(2) of the Act and this Court held that looking to that facts it is a wrong exercise of privilege under Sec.9(2) of the Act which has affected the right of making effective representation under Article 22(5) of the Constitution of India and, therefore, the continued detention of the detenu is bad and illegal. Keeping in mind the aforesaid legal position with regard to privilege under Sec. 9(2) of the Act, here in this case also, the statements were verified on 14.5.2000 and on the very next day the order of detention came to be passed. Hence, privilege claimed by him is not properly claimed in accordance with law and, therefore, the order of detention deserves to be set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The impugned order of detention dated 15.5.2000 passed by the respondent no. 1 with respect to detenu is set aside. The detenu is ordered to be released forthwith, if he is not wanted in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)
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